PROTECTION OF CHILD VICTIM OF SEXUAL OFFENCES— CRITICAL ANALYSIS OF RELEVANT LAWS AND PROCEDURE

SHORT SYNOPSIS

Submitted in partial fulfillment of the requirement of the degree of

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to

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by

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Registration number: 2K20-PFL-004

Under the supervision of

Dr. Versha Vahini

MANAV RACHNA
vidyanatariksha

MANAV RACHNA UNIVERSITY
(FORMERLY MANAV RACHNA COLLEGE OF ENGINEERING
NAAC ACCREDITED 'A' GRADE INSTITUTION)
Declared as State Private University under section 2f of the UGC act, 1956

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DECLARATION BY THE SCHOLAR

I hereby declare that the short synopsis "Whether Indian Criminal Law is victim oriented: Insight especially qua Protection of Children from Sexual Offences Act, 2012" being submitted in partial fulfillment of the requirement for the degree of Doctor of Philosophy in department of Law under Faculty of Law of Manav Rachna University, Faridabad during the academic year 2020-21. It is a bona-fide record of original work carried out under the supervision of Dr. Versha Vahini has not been submitted in full or part to any other university or institute for degree or diploma. Further, it is certified that the short synopsis is within the plagiarism limit and copy of the same is attached as per University norms.

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ABSTRACT

India is multilinguistic with diversity of culture, religions and regions but one of the conservative country in putting forth the thoughts of child sexual abuse in the society. However, these days the burning topic of the society in contrast to the thinking of the conservative society remains the discussion of child abuse as the families have turned into child-oriented families. Since long the world is making an attempt to talk about the child sexual abuse, laws for curbing the said offence and punish the perpetrator with heavy hands. However, as the children are the soft targets with immature minds and not having the realization of any such happening with them at times, the loopholes in the laws since made are overtaking the dispensation of justice with the victims. The attempt is being made to plug the said loopholes, to provide support system to the child victim at each and every stage with the friendly atmosphere to make future of the country more prosperous and without any feeling of guilt of childhood in a child.

Key words: POCSO; Sexual abuse; Child Rights

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I. INTRODUCTION

The present research endeavours to cypher works on child rights furthermore minor victims and the contiguous dilemmas in the criminal justice delivery system. Child sexual abuse despite being significant is not open to public conversations. The view of the majority population is that child sexual abuse only happens among the poor and the ethnic minorities. It is still a taboo in India. “One of the reasons lies in a traditional conservative family and community structure that does not talk about sex education and sexuality at all.” It was also noticed that “parents do hesitate to speak to children about sexuality as well as physical and emotional changes that take place during their adolescence.” As a consequence, the child does not repose confidence in anybody and does not come out with the pain the child is suffering. This silence encourages the perpetrator to continue the abuse & usually kids do not discern that they are transpiring to be the victims of abuse. As per the research on "Women's Experiences of Incest Awareness concerning child sexual abuse", it did not occur until the late 20th century. Child sexual abuse was first broadly uncovered in open in the beginning of 1970s where feminists drove an anti-rape campaign and adopted children as being the victims of sexual abuse as one precedent of an authoritarian patriarchal culture. Famous figures and other non-feminists soon joined the hardihood fronting sexual abuse with children during the 1970s & 1980s. Politicians contributed by creating governmental policy to protect children from sexual offences. Various mediums started covering many reports of childhood sexual abuse. Most people who told their childhood traumas were now adults and were elaborating crimes that were committed in the past. The narrated personal stories made sexual abuse a concern for the public encouraging them to get involved in creating policies to protect the children. “In a study on Women's Experiences of Incest and Childhood Sexual Abuse conducted by RAHI[1], some of the respondents stated that till the questionnaire was administered to them, they did not realize that they had been abused during their childhood.”

This being the dynamics and dimension of the problem, the present thesis is focused to make a socio-legal analysis of the Protection of Children from Sexual Offences Act, 2012, study of child abuse existing in different forms and how they have been dealt in existing legislation and governmental policies and what is the scope of its effective implementation.

[1] “RAHI Foundation, established in 1996, is a pinoeering organization focused on women survivors of Incest and Child Sexual Abuse (CSA).”

I. LITERATURE REVIEW

The researcher has conducted a thorough review of the current literature available on the area. The researcher has gone through international conventions and agreements, domestic legal literature available including statutes, case law, case studies and commission reports and legal framework applicable in other countries like Canada, USA, New Zealand and West Australia. The Annual reports of the "National Crime Records Bureau, Ministry of Home Affairs, Law Commission reports, Judicial Pronouncements, books, commentaries, research papers, journals and articles" have also been part of the literature under review.

The present thesis intends to compile efforts on child rights & minor victims and the related problems in the judicature.

The memoir of the struggle for child rights relates to “The United Nations Declaration of the Rights of the Child”, which is also known as the “Geneva Declaration of the Rights of the Child”. It is an “international document promoting child rights, drafted by Eglantyne Jebb and adopted by the League of the Nations in 1924, and adopted in an extended form by the United Nations in 1959” emphasizing upon the children rights. Thereafter, it was reaffirmed in the “United Nations Convention on the Rights of the Child (UNCRC)” in 1992.

There are three primary "International Instruments for the protection of Child Rights" which have been signed by India and are as follows:

- “Convention on the Rights of the Child
- Convention on the Elimination of all forms of discrimination against Women
- SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution”

I. *Child Sexual Offence And Its Types*

According to American Psychological Association, “sexual abuse is an unwanted sexual activity by perpetrators using force, making threats or taking advantage of victims not able to give consent.” It is a known fact that most victims and perpetrators know each other. According to the APA, “immediate reactions to sexual abuse include shock, fear or disbelief and long-term symptoms include anxiety, fear or post-traumatic stress disorder. While efforts to treat sex offenders

remain unpromising, psychological interventions for survivors— especially group therapy— appears effective."[2]

WHO[3] defines "child sexual abuse" as "the involvement of a child in sexual activity that he or she does not fully comprehend is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of a child in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performance and materials."[4]

I. *Dynamics Involved in Child Sexual Abuse*

The "sexual abuse" of minors is a bizarre series of incidents that are vastly distinct from that of "sexual abuse" where the victims are adults. It is thus advisable to not handle child sexual abuse matters in the same was as of adults. Some of the important features that characterize child sexual abuse include:

- "Physical force/violence is very rarely used; rather the perpetrator tries to manipulate the child's trust and hide the abuse.
- The perpetrator is typically a known and a trusted caregiver.
- Child sexual abuse often occurs over many weeks or even years."
- "The sexual abuse of children frequently occurs as repeated episodes that become more invasive with time. Perpetrators usually engage the child in a gradual process of sexualizing the relationship over time (i.e. grooming).
- Incest/ intra-familial abuse accounts for about one-third of all child sexual abuse cases.

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[2] APA's Encyclopedia of Psychology, 2000.

[3] "The World Health Organization is a specialzed agency of the United Nations that is concerned with international public health. It was established on 22 July 1946 headquartered in Geneva, Switzerland."

[4] "Child sexual abuse, WHO Report 2009, *available at:* http://www.who.int/violence_injury_ prevention/resources/ publications/en/guidelines_chap7.pdf (last visited on June 8, 2020)."

- Paedophiles are individuals who prefer sexual contact with children to adults. They are usually skilled at planning and executing strategies to involve themselves with children. There is evidence to suggest that paedophiles may share their information about children (e.g. child pornography). This can occur at an international level, particular through the use of the internet."[5]

I. *"Forms Of Child Sexual Abuse"*

"Physical Abuse"

"Physical abuse involves forcing of physical injury upon a child. This may include burning, hitting, punching, shaking, kicking, beating or otherwise harming a child." It is also noticed that intention is immaterial. Sometimes it happens that the parent or caretaker may not have intended to hurt the child. "And sometimes, it may be the result of over discipline or physical punishment that is inappropriate to the child's age."[6]

"Sexual Abuse"

"Sexual abuse is inappropriate sexual behaviour with a child. It includes fondling a child's genitals, making the child fondle the adult's genitals, intercourse, incest, rape, sodomy, exhibitionism and sexual exploitation. To be considered child abuse, these acts have to be committed by a person responsible for the care of a child (for example a babysitter, a parent, or a daycare provider) or related to the child. If a stranger commits these acts, it would be considered sexual assault and handled solely by the police and criminal courts."[7]

Emotional Abuse

"It is also known as verbal abuse, mental abuse, and psychological maltreatment. It includes acts or the failures to act by parents or caretakers that have caused or could cause serious behavioural, cognitive, emotional, or mental trauma. This can include parents/ caretakers using extreme and/or bizarre forms of punishment, such as confinement in a closet or dark room or being tied to a chair for long periods of time or threatening or terrorizing a child. Less severe acts, but no

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[5] Ibid.

[6] Essay on Child Abuse and Neglect, *available at:* https://www.bartleby.com/essay/Child-Abuse-and-Neglect-PKJ33D-SZTC (last visited on June 8, 2020).

[7] "The Role of Professional Child Care Providers in Preventing and Responding to Child Abuse and Neglect by Kathy Karageorge and Rosemary Kendall, *available at:* https://www.childwelfare.gov /pubPDFs/childcare.pdf (last visited on June 8, 2020)."

less damaging, are belittling or rejecting treatment, using derogatory terms to describe the child, habitual tendency to blame the child or make the child scapegoat."[8]

I. *Critical Analysis Of POCSO Act, 2012*

In India, however, the right of the child for protection against offences of sexual assault, sexual harassment and pornography was firstly recognized by way of implementation of the Protection of Children from Sexual Offences Act, 2012 which came into force on 19th June 2012 as the "Government of India" consented on December 11, 1992, to the "Convention on the rights of the child" embraced by the UN General Assembly which has designated an assortment of rules to be obeyed by all the "State Parties" in ensuring the most beneficial interest of the child. It was implemented after realization by the Government of India that "it was necessary for the proper development of the child that zir/ her/ his right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving a child."

Sections 28- 31 of the Act provides the speedy trial and that in every district, a Session's Court is designated as a "Special Court". It shall draw presumption that "the person has committed the offence unless the contrary is proved". Section 32 stipulates that a Special Public Prosecutor shall be appointed for the trial. Sections 33- 34 of the Act talks about the "Procedure & Powers of Special Court and ensure that child is not called repeatedly to testify to court". "It also prohibits aggressive questioning on character assassination of the child and ensures that the identity of the child is not disclosed." There is provision for direct payment of compensation for any physical/ mental trauma caused.

"Section 35 (1)" states that the "Evidence of the child is to be recorded within 30 days" and as per Section 35 (2), the trial should be completed within "a year from the day of taking cognizance". "Section 36" states that the minor should not be able to see an accused while testifying. Section 37 stipulates that the trial be conducted "in-camera and in the presence of the parents or any other person in whom the child has trust". Section 38 provides that the Court "may exert the support of a translator/ interpreter if the minor has a mental/ physical disability".

I. *The POCSO Rules, 2012 - Relevant Provisions*

[8] "Emotional abuse: The hidden form of maltreatment by Adam M. Tomison and Joe Tucci, *available at:* https:// aifs.gov-.au/cfca/publications/emotional-abuse-hidden-form-maltreatment accessed on (last visited on June 8, 2020)."

As per "Rule 4(7) of the Rules", the "Child Welfare Committee" on obtaining a statement, with the approval of the minor and the permission of the parent may render a "support person" to assist the minor during the trial and investigation; "Rule 4(8)" states that "support person shall at all times maintain the confidentiality of all information about the child to which he has access"; Rule 4(10) enshrines that "the services of the support person may be terminated by the Child Welfare Committee upon request by the child"; Rule 7(1) stipulates that the "Special Court may pass an order for interim compensation to meet the immediate needs of the child for relief and rehabilitation" and as per Rule 7(5), the "State Government shall pay the compensation ordered by the Special Court within 30 days of receipt".

I. *"Compensation Scheme For Women Victims/ Survivors Of Sexual Assault/ Other Crimes, 2018 By National Legal Services Authority"*

As per the compensation scheme, "the woman victim or her dependent(s)" has been held entitled to compensation under multiple schemes but the compensation received by her under "Section 357-B Cr.P.C." has to be brought within an account while determining the amount in a subsequent application. "Dependent comprises husband, father, mother, grand parents, unmarried daughter and minor children of the victim as determined by the State Legal Services Authority or District Legal Services Authority based on the report of the Sub- Divisional Magistrate of the concerned area/ Station Officer/ Investigating Officer or based on the material placed on record by the dependents by way of affidavit or on its enquiry." It has also been enshrined that IO/ Station House Officer/ Superintendent of Police/ DCP has to bestow the copy of First Information Report promptly following its listing with Legal Services Authority of offences covered under this Scheme. Even for the grant of "interim or final compensation", an application can be registered by the Victim or Dependents or Station House Officer of the area before concerned Legal Services Authority.

In case trial/ appellate court comes to conclusion that the criminal complaint and the allegations are false, then Legal Services Authority may begin proceedings for recovery of in part or full compensation, granted under this Scheme, before the Trial Court for its recovery as if it were a fine. Where a recommendation is made by the court for compensation u/s 357A (2) and/or (3) of the Code, an application is made by any victim or her dependent(s), u/s 357A (4) of the Code, to the SLSA/ DLSA for interim compensation, it shall prima facie satisfy itself qua compensation needs and identification of the victim. It shall examine the case and verify the contents of the claim for the

loss and rehabilitation needs as a result of the crime. However, the period shall not exceed beyond 60 days from the receipt of the claim/ petition or recommendation. After consideration of the matter, SLSA/ DLSA, upon its satisfaction, shall decide the quantum of compensation to be awarded to the victim or her dependent(s) taking into account the factors enumerated in Clause 8 of the Scheme.

If trial court supplies conclusions that the criminal complaint is incorrect, then SLSA/ DLSA may initiate measures for restoration of full or partial payment beneath this Scheme before the" Trial Court" for its recovery as a fine.

Data collected and published by “National Crime Records Bureau, Ministry of Home Affairs” for the various years would go a long way to show if the sexual offences against the children have been curbed in the manner it had to be achieved with the enforcement of the Act. In the year 2009, total cases reported of the crime against children were 24,201 whereas it increased to the figure of 26,694 in the year 2010, to 33,098 in the year 2011, to 38,172 in the year 2012 id est before the enforcement of the Protection of Children from Sexual Offences Act, 2012. The figure in the year 2013 was astonishing as it raised to 58,224. Then in the year 2014, it enhanced to 89,423 and in the year 2015 to 94,172.

Thus, from a perusal of above figure of crime rate against children, it culls out that the Act has not been able to achieve its aim and we still lack implementation and hence, this paper aims at analysing critically the Protection of Children from Sexual Offences Act, 2012 and the loopholes of the same in the hope of making a change in the lives of these angels who have already faced trauma at such a tender age by making the procedure of dispensation of Justice simpliciter by adopting other innovative ideas in pursuing the cases. The graph of sexual offences against the immature and vulnerable class of our society i.e. Children of our country has shown an increase in such like offences due to the following reasons:

1. Cases of sexual offences against children are not being reported which could be sometimes because the perpetrator is strong physically or financially or in power; sometimes the perpetrator is related to the victim, is a person of trust id est incest abuse and thus if the victim comes forward and discloses the act, either the version of the victim is not believed or the victim is prevailed upon in the name of honour of the family. The status of the child is again the same if the accused of incest abuse manages his acquittal by prevailing upon the witnesses may be by way of emotional blackmail or again financial blackmail being in a better position and sometimes, maybe the only member who brings home the bacon.

2. Most cases which are reported, the victims or the persons upon whom victims are dependant resile or do not support the case. It is again due to many reasons which could be due to pressure of society or family or pressure tactics of the perpetrator, complexities of the procedure, financial restraints, culture of compromise. Though the law has developed on the aspect that the conviction can be there on the sole statement of the child victim as he/she/ze cannot be termed as an accomplice but still the testimony of the child witness being a vulnerable witness is expected to have been corroborated by ipsi dixit of some other witness. However, owing to many reasons as discussed above, the witnesses do not support the case and thus, resile from their previous statements recorded during the investigation.

3. Though the Act has been tried to be made child friendly yet the method of recording the testimony of the child prescribed under the law has not achieved the objective with which it came into force. Our law is makinig the victims more mature than their age and snatching their innocence and childhood. She/ he/ ze has to undergo the pain of narration of the episode again and again which is torturous and undergoing the pain/ trauma of fateful incident repeatedly. Perversely, the obstacles to justice suffered by the child victims have rested as staunch as they were earlier. The conventional approach of minors in the courts and the testimony is unsatisfactory.

4. Provisions of the Act overrides the customary law as the custom prevails in some areas of the country or some families of child marriage and even such wedlocks are not "void ab initio" by the statutory law. Method of determination of the age of the child who has committed the offence has to be dispensed with under the prerequisites of the "Juvenile Justice (Care & Protection of Children) Act, 2000" whereas in determining the age of a child victim is not as per the provisions of Juvenile Justice Act but it depends upon the satisfaction of the special court and no method is prescribed in the Act for determination of the age of child victim. However, there are precedents by way of judicial pronouncements about the same.

5. Misuse of the provisions of the Act in consent cases id est the eventuality where the victim is mature enough to comprehend the nature of the consequences of the act performed by the sufferer.

6. Medical of the minor victim and the accused are not being conducted as prescribed under the rules and some rules are under the need to be amended. The need for special training to be imparted to the doctors for Medical Examination of the Child Victim and the accused of sexual offences.

7. The investigation in the sexual offences is not being conducted as required and the major lacunas are left to give the handle in the hands of the accused to use the same for his acquittal during trial. There is need for special training to be imparted to the investigating officers who are competent to investigate in such like offences.

8. No special training is being given to the Presiding Officers or the officials of the court staff who are attached to the special court dealing in cases of sexual offences.

9. Special Public Prosecutors are to be notified by the State Government concerning each "special court" for handling proceedings only beneath the prerequisites of the Act and the said person must be having the practice of "not less than seven years as an advocate"[9]. However, the said provision is not being given effect in its letter and spirit.

I. *Legal Frame Work and Measures Adopted By select foreign Countries to effectively protect Children from Sexual Offences*

Tracing the evolution of registration and methods for conducting investigation and recording ipsi dixit of the child witness in other parts of the world will help us in understanding the reasons for the ineffective implementation of POCSO Act, 2012 in India. The nations like Canada, the "United States of America, Newzealand and West Australia" have taken the efficient steps either for preserving the testimony of the child eyewitness or adopting the videotape of the statement of the child witnesses recorded during an investigation as examination-in-chief or making the measures of protection available to the witnesses whose lives are endangered. Hence, the legal framework of above-said countries for the limited purpose of the present research is being studied hereinbelow.

I. *Canada*

"In any proceeding relating to an offence under Section 151, 152, 153, 155 or 159[10], subsection 160 (2) and (3) or Section 170, 171, 172, 173, 271, 272 or 273[11], in which the complainant was under the age of eighteen years at the time the offence is alleged to have been committed, a videotape made within a reasonable time after the alleged offence, in the complainant

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[9] The Protection of Children from Sexual Offences, s. 32.

[10] The Criminal Code, RSC 1985, c C- 46.

[11] Ibid.

describes the acts complained of, is admissible in evidence if the complainant, while testifying, adopts the contents of the videotape."[12]

The Constitutionality of the said Section was "challenged on the ground that it is violative of Section 7 and 11 (d) of the Canadian Charter of Rights & Freedoms." However, in the case of *Her Majesty The Queen*[13], it was opined that "by allowing for the videotaping of evidence under certain express conditions, Section 715.1[14] not only makes participation in the criminal justice system less stressful and traumatic for the child and adolescent complaints but also aids in the preservation of evidence and the discovery of truth." It was further held that "it does not infringe either Section 7 or 11 (d) of the Charter; it does not offend the rules of evidence against the admission of hearsay evidence and prior consistent statements but in addition, the right of the accused to cross-examine is not violated as there is no constitutional requirement that cross-examination should be contemporaneous with the evidence. By preserving an early account of the complaint of the child and by providing a procedure for the introduction of the story of the child into evidence at the trial." The said Section rather facilitates the attainment of the truth. "Section 7 of the Charter which entitles an accused to a fair trial does not entitle the person to the most favourable procedures that could be imagined. The rules of necessity and reliability were designed as substitute requirements in instances where an exception to the rules of evidence is mandated."[15] Reliability stems from the attendance of the minor throughout the hearing, the enactment under oath of one's video accounts, the possibility to perceive the minor in the recording and in court and the capacity of the "accused to cross-examine the child" whereas the constraint crops from the potential loss of remembrance of the child or the adverse outcomes that the minor may undergo if compelled to testify at the hearing.

It has been held to be compatible with "Fundamental Principles of Justice and a Right to a Fair Trial protected by Section 7 or 11 (d) of the Charter".

I. *United States of America*

In the United States of America, the "6th Amendment" ensures that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial; and to be confronted

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[12] The Criminal Code, RSC 1985, c C- 46, s. 715.1

[13] Her Majesty The Queen v. DOL (1993) 4 SCR 419.

[14] Criminal Code of Canada

[15] Supra 27.

with the witnesses against him. Also, the "1st Amendment" envisages the “right to freedom of speech, and of the press which includes the right to information though in certain earlier judgments of the Supreme Court the right to open confrontation was treated as absolute". In later judgments such as Maryland Case[16], the court agreed that “the right was not absolute and accepted through closed-circuit television to be given by a juvenile victim.”

I. *New Zealand*

"Section 13B to 13J" were introduced into the "Evidence Act, 1908 of New Zealand by Evidence (Witness Anonymity) Amendment Act, 1997". This made the security suitable to all witnesses whose lives were expected to be jeopardised. It was amended to introduce the “fair balancing of rights of witnesses and victims on one hand and the rights of the accused on the other hand.”[17]

I. *Western Australia*

In "Western Australia", the application of pre-trial video testimonies by minor witnesses is conventional. "Judith Cashmore", in “An evaluation of the NSW child sexual assault special jurisdiction pilot” researched a specialist jurisdiction for child sexual assault matters. It was a pilot “which was established in the Sydney West District Court Registry for trying to reduce delays, improving the physical environment of the court and using special innovative measures to assist children to give evidence; and increasing the skills of legal professionals involved in the court process.” It was found that the “conviction rate was about 70% regardless of the testimony method.” It has also been pointed out by Cashmore that the videotape “depositions also help the children get on with their lives.”

Moreover, India can adopt the procedure of practising a recording of the minor’s account preferably than a live declaration for chief-examination because memory can fade or be contaminated overtime on the parallel line as of Western Australia. We can use props such as dolls and drawings to facilitate the testimony so that the child feels homely and is more open to the court. Lastly, the child-friendly room is made available where the child won’t be allowed to see the accused.

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[16] Maryland v. Craig, (1990) 497 US 836.

[17] The Evidence Act, 1908 of The Evidence (Witness Anonymity) Amendment Act, 1997, s. 13B to 13J.

I. *Innovative Procedural measures in India*

Another question which crops up is whether the law evolved on the recording of testimony of witnesses will extend any help in curbing the problem arising in dealing with the cases relating to sexual offences against the children. The principles of natural justice and fair trial are an inherent part of the criminal justice administration. The said principles have evolved in various cases. In the case of *Talab Haji Hussain*[18], Apex Court observed that the "test of fairness in a criminal trial must be judged from dual point of view" id est it must be fair to the accused and the prosecution as well. The object of a fair trial in criminal cases must lead to the "acquittal of the innocent and conviction of the guilty". In the case of *Maneka Sanjay Gandhi*[19], the Supreme Court emphasised the call for a friendly environment for a just and fair trial. In the *Best Bakery case*[20], it was held by Apex Court that not only the effort to protect the interest of the accused be present but the effort should also be made to ensure a just trial where both prosecution and accused receive an appropriate arrangement.

I. *Need For Protection Of Witnesses*

In the *Best Bakery case*[21], relying upon the saying of renowned jurist Bentham, "*Witnesses are the eyes and ears of justice"* held that "if the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of the frequent turning of witnesses as hostile. There comes the need for protecting the witness. There should not be only effort to protect the interest of the accused but the effort should also be made to ensure a fair trial where both accused and prosecution get a fair deal."

In the case of *Bimal Kaur Khalsa case*[22], it has been held that "the court in its discretion shall, on one hand, try to ensure that a witness can depose in court free from all mental constraint and fear and on the other hand, would ensure that an accused is put in a position to effectively cross-examine the witness. It has also been observed that the court can also allow the shielding of a witness while bringing him to the courtroom where he would be made to depose openly and not

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[18] Talab Haji Hussain v. Madhukar Purushottam Mondkar, AIR 1958 SC 376.

[19] Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167.

[20] Zahira Habibullah v. State of Gujrat @ Best Bakery Case, 2006 (2) R.C.R. (Cri.) 448 .

[21] Ibid.

[22] Bimal Kaur Khalsa v. Union of India AIR 1988 P&H 95.

from behind the purdah and where the trial is in open court, the identity of the witnesses shall not be screened from the accused, his counsel and the court. Thus, the said provisions were not considered to contained a procedure that can be held to be unreasonable, unjust or unfair."

Supreme Court in *Kartar Singh case*[23], confirmed the soundness of provisions of "16(2) and (3) of Terrorist and Disruptive Activities (Prevention) Act, 1987" and held as follows:

"Generally speaking, when the accused persons are of bad character, the witnesses are unwilling to come forward to depose against such persons fearing harassment at the hands of these accused. The persons who are put for trial under this Act are terrorists and disruptions. Therefore, the witnesses will all the more be reluctant and unwilling to depose at the risk of their life. The parliament having regard to such extraordinary circumstances has thought it fit that the identity and addresses of the witnesses be not disclosed in any of the above contingencies."

I. *In-Camera Proceedings*

By the Amendment Act[24], Sections 375 & 376 Indian Penal Code was amended to curb the crime against women particularly punishing the "custodians who molest a woman under their custody and care". "Section 114-A" was further inserted in the "Evidence Act" which draws "conclusive presumption qua absence of consent in certain prosecutions for rape involving such custodians." Sub-sections (2) & (3) were added in Section 327 Code of Criminal Procedure, 1973 to conduct the enquiry of rape or an offence under" Sections 376, 376 A, 376 B, 376 C or 376 C" in-camera and requirement of the permission of the court to publish such matter. Keeping in view the above-said provisions it was held that the "courts are obliged to act in furtherance of the intention expressed by the legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327 (2) & (3) Code of Criminal Procedure, 1973 and hold the trial of rape cases in-camera. Where trials are held in-camera it would not be lawful for any person to print or publish any matter concerning the proceedings in the case except with the previous permission of the court, this would save any further embarrassment to the victim of a sex crime. Wherever possible it would also be worth considering whether it would not be more desirable than the cases of sexual assaults on the females are tried by lady judges, wherever available. The courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders."[25]

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[23] Kartar Singh v. State of Punjab 1994 (3) SCC 569.

[24] Criminal Law (Amendment) Act, 1983. Act 43 of 1983.

[25] State of Punjab v. Gurmeet Singh, 1996 (2) SCC 384.

In *Naresh Shridhar Mirajkar*[26], the Supreme Court held that "the power to hold a trial in-camera should include the power to hold a part of the trial in-camera." It also includes the power to prohibit excessive publication of the part of the proceedings in a trial.

In the case of *Vineet Narain case*[27], it was held that "the requirement of a public hearing in a court of law for a fair trial is subject to the need of proceedings being held in camera to the extent necessary in the public interest and to avoid prejudice to the accused."

In the case of *Bimal Kaur Khalsa*[28], relying upon the case of *Talab Haji Hussain*[29], reference was made to the provision of Section 327 Code of Criminal Procedure, 1973 which stipulates that "the mandatory departure from the norm of an open court trial is warranted only regarding any enquiry into or trial of an offence under Section 376, 376A, 376B, 376C or 376D of the Indian Penal Code and even there, the Presiding Officer may if he thinks fit allow any particular person to have access to or remain in the room or building used by the court. The trial of other offences is envisaged to be held in open court with the proviso that the presiding judge if he thinks fit can exclude the public generally or any particular person from being present in room or building where the trial is held. However, the provision of Section 16(1) of the Act leaves no discretion to the court whatsoever may be the matter".

I. *Evidence Through Video Conferencing*

The law of recording evidence evolved to the extent that the recording of witnesses through video conferencing has been recognised. Supreme Court in *Dr Praful B. Desai case*[30], the question for consideration arose whether in a criminal trial evidence be recorded in a video conferencing. Reference was made to " Section 273 Code of Criminal Procedure, 1973"[31] and it was embraced " that evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video- conferencing."

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[26] Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1.

[27] Vineet Narain v. Union of India AIR 1998 SC 889.

[28] Bimal Kaur Khalsa v. Union of India AIR 1988 P&H 95.

[29] Supra 35.

[30] State of Maharashtra v. Dr. Praful B. Desai 2003 (4) SCC 601.

[31] "Evidence to be taken in presence of accused: Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.; Explanation.- In this section, ' accused' includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code."

I. *Culture of Compromise*

Added vital cause for witnesses turning hostile is known as "Culture of Compromise" as held in the case of *Ramesh*[32] followed in the case of *Abhijeet*[33].

In this respect, couple articles by *"Daniela Berti"*[34] probes into "sociological analysis of hostile witnesses, noting how village compromises (and possibly peer pressure) are a reason for witnesses turning hostile."

There is also an increase in the "Culture of Compromise"[35]. Reflecting upon such practice in rape lawsuits, "Pratiksha Bakshi" has emphasised this obstacle and observed that *"during the trial, compromise acts as a tool in the hands of defence lawyers and according to the pressurize complainants and victims to change their testimonies in a courtroom."*.

I. RESEARCH PURPOSE AND OBJECTIVES

Research Problem

"Child sexual abuse" has grown into a serious social problem. Sexual violence is a kind of violence that not only causes momentary injury on the body of a child but also leaves a life long scar on the child's psyche which may lead to psychological disorders and thereby the overall growth of a child. However, there was no specific law to deal with the same. We need to guard the integrity of childhood now and in future. Hence, the POCSO Act was enforced in the year 2012. The purpose with which it was implemented was to provide a safe environment for a child to report about such fateful incidents; to safeguard the rights of the child as in other countries; to extend full support to the child victims et Cetra. However, as per reports of NCBR, Ministry of Home Affairs, it has not been able to achieve the said aim and such like cases are still on increase. There is need of the hour to look into the loopholes and reasons for ineffectiveness in its implementation.

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[32] Ramesh & Ors. v. State of Haryana, 2016 (4) R.C.R. (Cri.) 955.

[33] Abhijeet S. @ Ankur Likhari v. State of Punjab, 2019 (3) RCR (Cri.) 229.

[34] Berti, Daniela. "Courts of Law and Legal Practice." A Companion to the Anthropology of India. Clark-Decès, Is- abelle (ed). Blackwell Publishing, 2011. Blackwell Reference Online. 29 October 2012 <http://www.blackwellrefer- ence.com / subscriber/tocnode.html?id=g9781405198929_chunk_g978140519892920>

[35] Pratiksha Bakshi, "Justice is a secret: Compromise in Rape Trials" Sage Journals (2011).

I. RESEARCH METHODS

The following shall be the objectives of the proposed research:

1. To critically analyze the laws relating to the protection of children from Sexual Offences, including POCSO Act, 2012.
2. To examine the decided cases and guidelines of the courts protecting the interest of the child victim.
3. To underline, evaluate and compare the relevant regulations retelling the child victims in other countries like Canada, USA, New Zealand and West Australia.
4. To make suitable suggestions for the effective implementation of the laws relating to the protection of children from sexual assault in India.

Hypothesis

1. Sensitised Investigating Officers/ speedy and improved tools of investigation help the legal system in effective protection of the children from sexual offences.
2. The child-friendly trial procedures including recording of evidence of child victim in pre-trial stage help the child to recover fast and prevent psychological disorders and in ensuring conviction of the accused.
3. Support system by State/society help the child victim in early rehabilitation and integration in the society.
4. Role of other functionaries such as medical professionals, social workers et Cetera is crucial to provide child-friendly environment.

Research Questions

Research enquiry of this study probes into some key aspects of the Protection of Children from Sexual Offences Act, 2012:

1. Whether the law relating to reporting and investigation into child sexual offences preserve the child victim's interests?

    1.1 Whether the law is sufficient to inspire confidence in a child to come forth and report the sexual abuse suffered by a child victim?

1.2 Whether the investigation procedure has been made more scientific and friendly for the child victim?

1.3 Whether the Investigating Officers are playing their roles in an effective manner and spirit that are assigned to them?

2. Whether the trial procedure is oriented towards protection of interest of child victim?

2.1 Whether the law and procedure relating to the recording of evidence of victim are child-friendly and victim-oriented?

2.2 Whether the support system by the State is an efficient mechanism to overcome the trauma experienced by the child victim and to rehabilitate the child victim?

2.3 Whether the law and procedure protect the rights and interest of accused way too far to the disadvantage of the victim?

2.4 Whether the perpetrator/ accused gets the benefit of his dominant position *vis a vis* child victim during the trial?

3. Whether the role of other stakeholders such as doctors, social workers, counsellors is oriented towards the protection of interest of child victim?

4. Whether the enforcement of the Protection of Children from Sexual Offences Act, 2012, has been successful in achieving the purpose, for which it was enacted?

"Research Methodology"

The research is doctrinal and empirical divided into two aspects/ phases:

I. In this phase, exploratory and doctrinal research shall be carried out. The primary source like Statutory text, decided cases, case studies, case files, Commission reports, international conventions and other such material shall be relied upon to study the implementation and enforcement of the POCSO Act, 2012. The research will also rely upon such similar primary sources to study the law and legal principles operating in countries like USA, Canada, New Zealand and West Australia. The secondary sources like commentaries and research articles shall also be studied and quoted as supporting and corroborating material. The past experience of the scholar gained while holding the current position of Additional District & Sessions Judge and the former head of the special court of the POCSO Act would help in identification of the problems and offer constructive suggestions.

II. In the second phase of the study, the researcher plans to collect primary data through empirical research on the "issues and challenged in implementation of the POCSO Act." The data is proposed to be collected from the Judicial Officers, Police Officers and Lawyers/ public prosecutors and other stakeholders. The respondents are proposed to be identified through sampling method upon whom a structured questionnaire shall be administered. The data then shall be analyzed through accepted data analysis methods to draw valid conclusions.

I. SCOPE, LIMITATIONS, SIGNIFICANCE & IMPLICATIONS

The present research is an attempt to serve the society by suggesting the means to scientifically investigate the case, to help the child in overcoming the trauma and to expedite the trial and better procedure for conducting the trial in the cases of the POCSO Act, 2012. The researcher will also make an attempt to search criminal procedure of other countries and make suggestions for incorporation of a better system. However, the countries taken for research are more developed but underdeveloped countries may also be studied for the said purpose.

I. REFERENCES

Bare Legal Texts – National and International

1. Australian Law Reform Commission, 1997.
2. Canadian Charter of Rights and Freedom, s. 7.
3. Convention on the Rights of the Child adopted by the General Assembly of United Nations on Feb. 20, 1989, art. 17(e) & 19.
4. International Covenant of Civil & Political Rights, art. 14 (1).
5. The Constitution of India, Art. 3, 19, 20, 21 & 22.
6. The Criminal Code.715.1 .s ,46 -RSC 1985, c C ,
7. The Evidence Act, 1908 of The Evidence (Witness Anonymity) Amendment Act, 1997, s. 13B to 13J.
8. The Juvenile Justice (Care & Protection of Chilren) Act, 2015.
9. The Protection Of Children From Sexual Offences Act, 2012.
10. The United Nations Convention on the Elimination of all forms of Discrimination against Women, 1979.
11. The United Nations Convention on the Elimination of Discrimination against Women ratified in Aug. 1993.
12. The United Nations Convention on the Rights of the Child.
13. The United Nations Declaration of the Rights of the Child.
14. The United Nations Right of Child Convention ratified by Government of India on Dec. 11, 1993.

Books & Articles

1. 198th Report, (2006). *Witness Identity Protection and Witness Protection Programmes*. [online] Available at: http://lawcommissionofindia.nic.in/reports/rep198.pdf [Accessed 20 May 2020].

2. Catherine C. (2005). Sexual Revictimization: A Review of the Empirical Literature. [online] Sage Journals. Available at: https://journals.sagepub.com/doi/10.1177/1524838005275087 [Accessed 20 May 2020].
3. Cashmore, J (2005). An evaluation of the NSW child sexual assault special jurisdiction pi- lot. [online] ResearchGate. Available at: https://www.researchgate.net/publication/27479639_The_Experiences_of_Child_Complainants_of_Sexual_Abuse_in_the_Crimi- nal_Justice_System [Accessed 20 May 2020].
4. *17. Child Soldiers Final Exam* [Online]. Available at: https://quizlet.com/137693861/child-sol- diers-final-exam-flash-cards/ (Accessed: 21 May 2020).
5. Dube S.R. (2005). Long-term consequences of Childhood Sexual Abuse by Gender of Victim. [online] PubMed. Available at: https://pubmed.ncbi.nlm.nih.gov/15894146/ [Accessed: 25 February 2020].
6. HaQ: Centre for Child Rights. (2016) *Lost Childhood Caught in armed conflict in Jharkhand* [Online]. Available at: https://www.slideshare.net/HAQCRCIndia/lost-childhood-caught-in-armed-violence-in-jharkhand (Accessed: 21 May 2020).
7. National Crime Records Bureau [Viewed 21 May 2020]. Available from: .in.gov.ncrb//:https
8. Patrick A. Curtis & Gina Alexander (Eds.), 'What works in Child Welfare. New York: Child Welfare League of America.(2012) ,'

Cases

1. Abhijeet S. @ Ankur Likhari v. State of Punjab [2019] (3) RCR (Cri) 229 para 48, 49.
2. Bimal Kaur Khalsa Case [1998] AIR P&H 95.
3. . Coy v. Iowa. [1988] 487 (U.S.) 1012
4. Craig v. Maryland 836 US 497
5. Crawford v. Washington [2004] 541 U.S. 36.
6. Delhi Domestic Working Women's Forum v. Union of India [1995] (1) SCC 14.
7. Dinesh Trivedi v. Union of India [1997] (4) SCC 306.
8. Express Newspaper v. Union of India [1958] AIR SC 578.
9. G.X. Francis v. Banke Bihari Singh [1958] AIR SC 209.
10. Globe Newspaper Co. v. Superior Court, County of Norfolk. ,Oyez www.oyez.org/cases/1981/81-611. Accessed: 20 May. 2020.
11. Gurbachan Singh v. State of Bombay [1962] AIR SCC 221.

12. Harpreet Kaur v. State of Maharashtra [1992] AIR SC 779.

13. 35. Her majesty the Queen v. D.O.L. & The Attorney General of Canada etc. [1993] 4 SCR 419.

14. Himanshu Singh Sabharwal v. State of Madhya Pradesh & ors. [2008] (2) R.C.R. (Cri.) 267.

15. Kartar Singh v. State of Punjab [1994] (3) SCC 569.

16. Mahender Chawla & ors. v. Union of India [2019] (1) R.C.R. (Cri.) 268.

17. Malani Jeth Rani v. Gandhi Sanjay Maneka 4 SCC 167 (1979)

18. Maneka Gandhi v. Union of India [1978] (1) SCC 240.

19. National Human Rights Commission v. State of Gujrat [2010] (6) R.C.R. (Cri.) 174.

20. Police Commissioner, Delhi v. Registrar, Delhi High Court [1997] AIR SC 95.

21. PUCL v. Union of India, [2003] (10) SCALE 967.

22. Ramesh & ors. v. State of Haryana [2016] (4) R.C.R. (Cri.) 955.

23. Sakshi v. Union of India, [2004] (3) RCR (Cri) 702.

24. State of Maharashtra v. Dr. Praful B. Desai [2003] (4) SCC 601.

25. State of Punjab v. Gurmit S. [1996] (2) SCC 384.

26. Talab Haji Hussain v. Madhukar Purushottam Mondkar [1958] AIR SC 376.

27. Vineet Narain v. Union of India [1998] AIR SC 889.

28. Zahira Habibullah v. State of Gujarat [2006] (2) R.C.R. (Cri.) 448.

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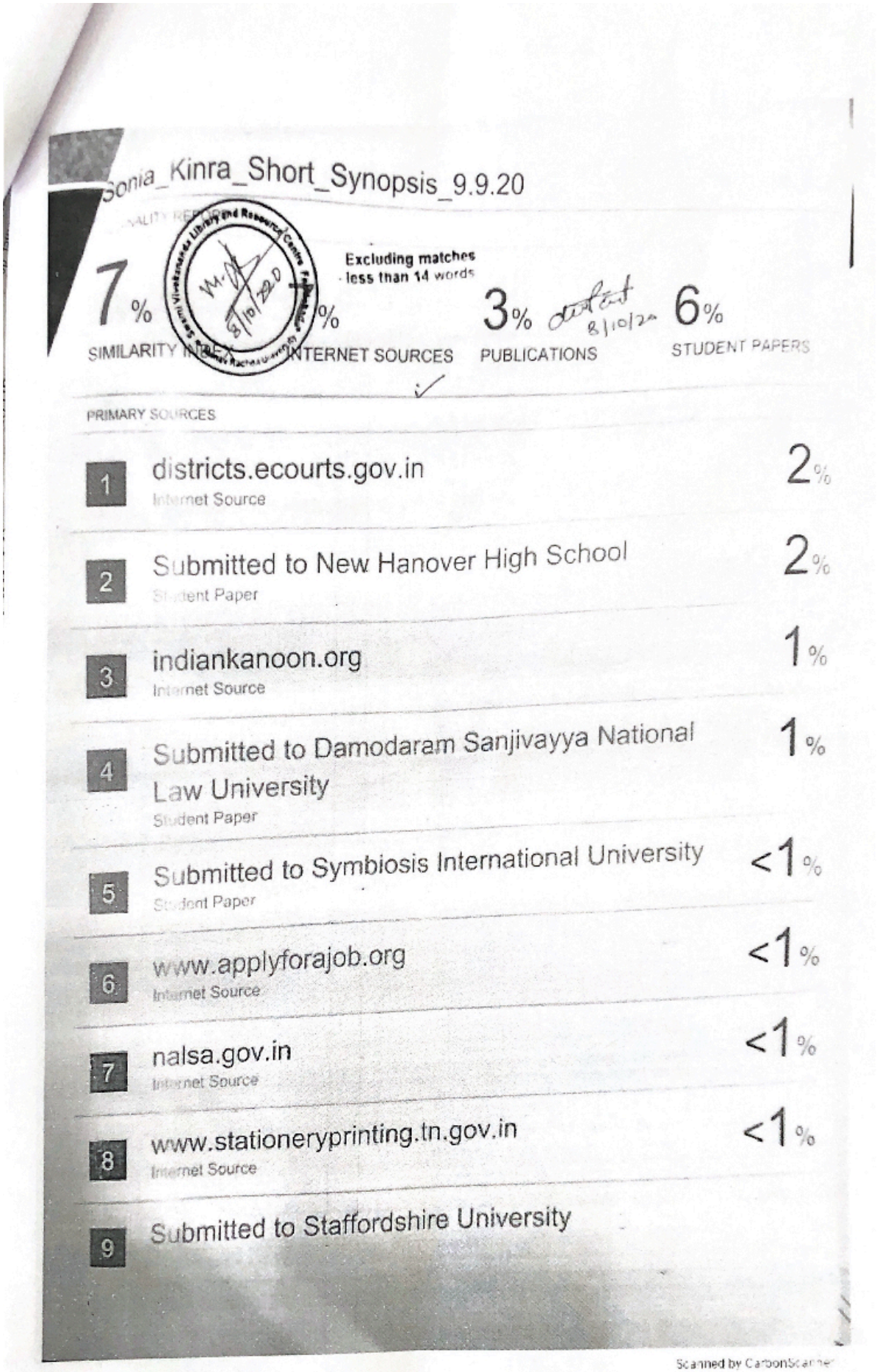

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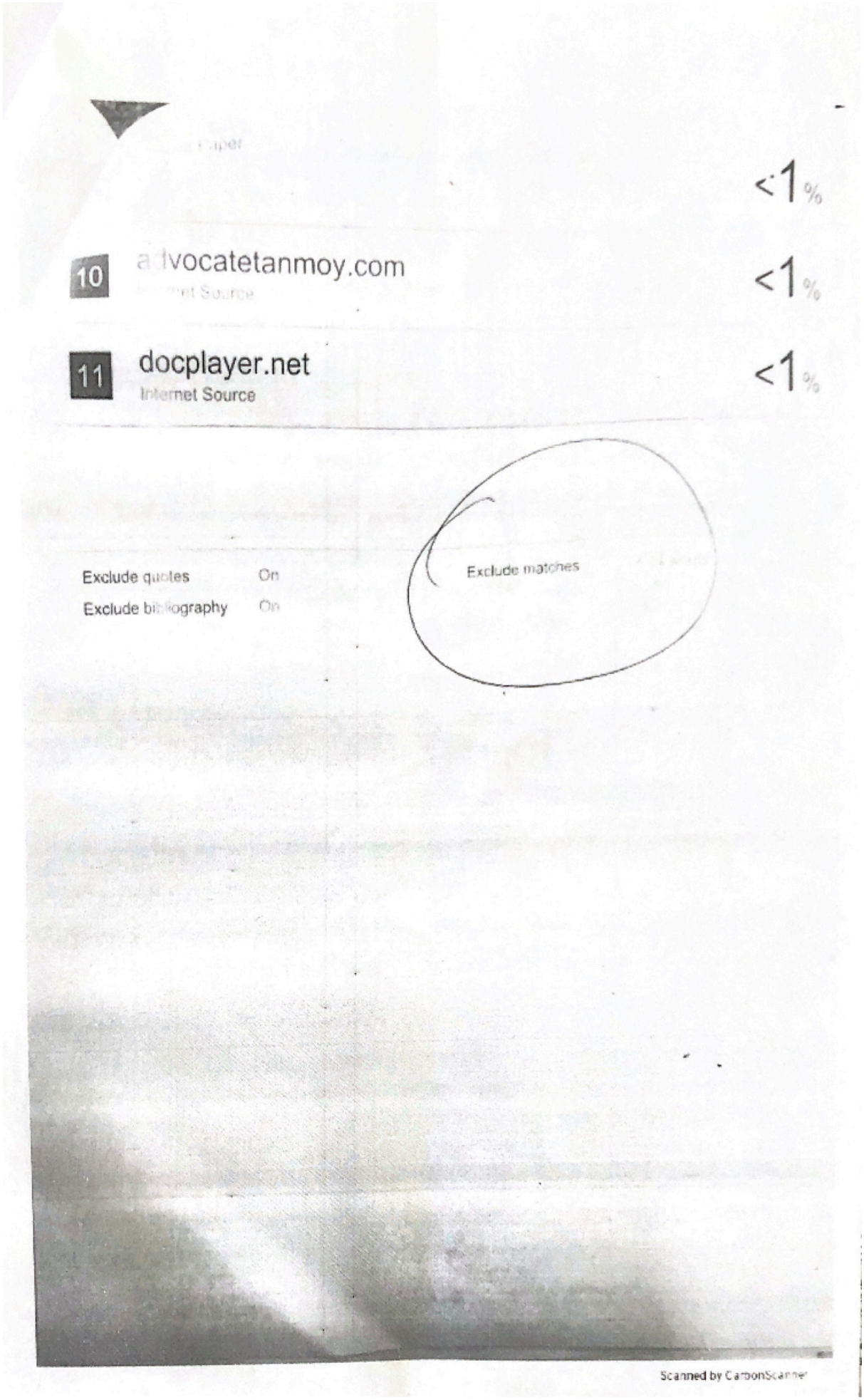
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